



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCA 2252-89

July 17, 1989

OIA FILE

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

Department of Commerce (Levitt 377-3151)	324
Department of Defense (Brick 697-1305)	325
Department of Justice (Perkins 633-2113)	217
Department of Energy (Rabben 586-6718)	209
National Security Council (Hughes x3723)	249
Arms Control and Disarmament Agency (Starr 647-8478)	234
Central Intelligence Agency	258

SUBJECT: State's modified draft HFAC bill entitled the "Chemical and Biological Warfare Elimination Act."

NOTE: State would like to use this language as an alternative to possible CBW amendments that may be offered on the State Authorization and/or Foreign Aid later this week in the Senate. Accordingly, it is important that we receive your comments by 4:00 P.M., TUESDAY, JULY 18th.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 4:00 P.M., TUESDAY, JULY 18, 1989.

Questions should be referred to SUE TRAU/ANNETTE ROONEY (395-7300), the legislative analyst in this office, or to Jeff Ashford (395-3920).

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosure

cc: C. Boyden Gray T. Thiele
D. Taft S. Dotson

Modified Draft HFAC Bill
Version #2.02
7/14/89

Sec. 1 Short Title.

This Act may be cited as the "Chemical and Biological Warfare Elimination Act."

Sec. 2 Findings. The Congress finds and declares that:

- (1) International cooperation is a prerequisite to the elimination of chemical and biological warfare;
- (2) It is a top priority to achieve as soon as practicable a comprehensive, global and effectively verifiable ban on the use, development, production, stockpiling and transfer of chemical weapons;
- (3) Consistent with such a ban, all countries should cease development, production, stockpiling and acquisition of chemical weapons at the earliest possible date;
- (4) The United States should cooperate with and lead multilateral efforts to stop chemical weapons proliferation and use. These efforts include the negotiations at the Geneva Conference on Disarmament for a worldwide ban on chemical weapons, controls on proliferation of chemical weapons and related items through the Australia Group, the Paris Conference of January 1989 on chemical weapons use and the upcoming Canberra conference on chemical weapons proliferation;
- (5) The United States should also take the necessary action to prevent the proliferation of chemical and biological weapons, such as controlling United States exports and encouraging foreign governments and companies to exercise similar controls; and
- (6) The United States should work with other nations or groups of nations, such as the Australia Group, to adopt progressively stronger measures (including appropriate sanctions) against countries which use chemical or biological weapons in violation of international law. The President is urged to negotiate multilateral sanctions pursuant to UN Security Resolution 620, which declared the intention of the Council to give immediate consideration to imposing "appropriate and effective" sanctions against any nation which uses chemical weapons in violation of international law.

-2-

TITLE I - MEASURES TO PREVENT THE PROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS

Sec. 101 Multilateral Efforts.

(a) It is the policy of the United States to seek multilaterally agreed arrangements with other nations, such as the member nations of the Australia Group, to control the proliferation of chemical and biological weapons. The President is urged to negotiate multilateral sanctions under such arrangements.

(1) The President shall submit to the Congress a report containing a description of United States efforts to negotiate multilaterally agreed guidelines and measures, including common export controls and multilateral sanctions, to prevent chemical and biological weapons proliferation.

Sec. 102. Export Controls

(a) The President shall utilize the authority contained in the Arms Export Control Act (22 U.S.C. 2778) and the Export Administration Act of 1979 (50 U.S.C. 2401 et seq) to control the export of those goods and technology that the President determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver or use chemical or biological weapons.

(b) An individual validated license shall be required for the export of any goods or technology described in subsection (a) and subject to control under the Export Administration Act of 1979 unless the destination of such export is to a country with whose government we have entered into multilateral or bilateral arrangements for the control of chemical or biological weapons related goods or technology. All goods and technology described in subsection (a) and subject to control under the Arms Export Control Act shall continue to require an individual license regardless of destination.

(c) The provisions of Section 6 (b), (c), (d), (e), (g), (h), and (m) of the Export Administration Act of 1979 shall not apply to any controls imposed under that Act pursuant to multilaterally agreed arrangements for controlling the proliferation of chemical or biological weapons.

Sec. 103 Sanctions Against Certain Foreign Persons.

- 3 -

(a) The President shall apply either or both of the sanctions under subsection (b) if the President determines that any foreign person, after the date of enactment of this Act, has knowingly and substantially contributed to the efforts to use, develop, produce, stockpile or otherwise acquire chemical or biological weapons by any country that the President has determined has either used chemical or biological weapons in violation of international law or is making substantial preparations to do so. Such sanctions shall only be imposed following consultations with the government with primary jurisdiction over the foreign person and shall not be applied when the President has determined that such government has taken adequate corrective action or when the President determines that application of sanctions would significantly and adversely affect on-going multilateral efforts to control chemical or biological weapons proliferation. The President shall report to Congress with respect to any determinations made under this section.

(b) The sanctions to be imposed pursuant to subsection (a), for a period not less than one year and not greater than three years, are:

(1) The United States government shall not procure, or contract for the procurement of, any goods or services from any foreign person referred to in subsection (a).

(2) The importation into the United States of products produced by a foreign person referred to in subsection (a) is prohibited.

These sanctions shall cease to apply six months following a Presidential determination that there is reliable evidence the foreign person has ceased its activities related to the proliferation of chemical or biological weapons.

(c) The President shall not apply sanctions under this section-

(1) in the case of procurement of defense articles or defense services-

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

- 4 -

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions;

(3) to-

(A) spare parts,

(B) component parts, but not finished products, essential to United States products or production, or

(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(D) to information and technology.

(d) The President may waive sanctions imposed under subsections (a) and (b) if he determines that doing so is essential to the national security or foreign policy of the United States. In the event the President decides to apply such a waiver, he shall inform Congress not less than 20 days before the waiver takes effect. Notification to Congress pursuant to this paragraph shall be accompanied by a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(e) For purposes of this section-

(1) the term "component part" means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term "finished product" means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product;

- 5 -

(3) the term "sanctioned person" means a person, and any successor entity of the person, upon whom sanctions have been imposed under this section.

Sec. 104 Judicial Review.

Any determination by the President under Section 102 or 103 and the imposition of any control or sanction under Section 102 or 103 shall not be subject to judicial review.

TITLE II - MEASURES TO PREVENT THE USE OF CHEMICAL OR BIOLOGICAL WEAPONS

Sec. 201 Sanctions Against Certain Countries.

(a) The President shall impose one or more of the sanctions described in subsection (b) against any country that the President determines has, after the date of enactment of this Act used chemical or biological weapons in violation of international law.

(b) The sanctions to be imposed pursuant to subsection (a) shall be selected from the following:

(1) Stopping United States Government sales to that country of any defense article or defense service.

(2) Prohibiting issuing licenses for the export to that country of any item on the United States Munitions List.

(3) Using the authorities of section 6 of the Export Administration Act of 1979 to prohibit or restrict the export to that country of goods or technology on the control list established pursuant to that Act.

(4) Imposing restrictions or prohibitions on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product or manufacture of that country.

(5) Cutting off assistance to that country under the Foreign Assistance Act of 1961 other than assistance which is intended to benefit the people of such country directly and which is not channelled through governmental agencies or entities of such country.

- 6 -

(6) Opposing any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(7) Using the President's constitutional powers to downgrade or suspend diplomatic relations between the United States and the country.

(c) The President may waive the imposition of sanctions under subsection 201(a) or (b) if he determines that doing so is essential to the national security or foreign policy of the United States. In the event the President decides to apply such a waiver, he shall inform Congress not less than 20 days before the waiver takes effect. Notification to Congress pursuant to this paragraph shall be accompanied by a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(d) [language as necessary and to be agreed upon addressing intelligence related activities]

TITLE III - MISCELLANEOUS PROVISIONS

Sec. 301 Presidential Reporting Requirements

(a) Not later than 90 days after the date of enactment of this Act, and every year thereafter, the President shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report which shall include:

(1) Current efforts under way by any country that the President has determined has used or is making substantial preparations to use chemical or biological weapons in violation of international law to acquire chemical or biological weapons, together with an assessment of the current and likely future capabilities of such countries to develop, produce or use such weapons;

(2) A description of the use of chemical weapons in violation of international law, substantial preparations to use chemical weapons in violation of international law; and development, production, stockpiling or use of biological weapons in violation of international law by any country; and

(3) A description of the extent to which foreign governments or persons or U.S. persons have knowingly and substantially contributed to the efforts of countries described in paragraph (1) above, to develop, produce, stockpile, acquire or use chemical or biological weapons.

07/17/89 16:32 202 647 6095

DOS LEGIS AFFAIR

009/009

Drafted: L/EBC MKenchelian
7/3/89 Wang 5777Q

DOC Revisions 7/11/89
State draft 1.1 7/12/89 .